UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: TERRORIST ATTACKS ON SEPTEMBER 11, 2001	03 MDL 1570 (GBD)
HAVLISH, *et al.*, Plaintiffs, v. BIN LADEN, *et al.*, Defendants.	03 Civ. 9848 (GBD)
JOHN DOES 1 through 7, Plaintiffs, v. THE TALIBAN, *et al.*, Defendants.	20 Misc. 740 (GBD)
	Remote Conference
	New York, N.Y.
	February 22, 2022
	9:30 a.m.

Before:

HON. SARAH NETBURN,

Magistrate Judge

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Also Present:
Joseph Borson, Department of Justice - Civil Division

(Case called)

THE COURT: Good morning, everybody. This is Judge Netburn. I think we are ready to begin.

This case is alternatively captioned In Re: Terrorists Attacks on September 11, 03 MD 1570; in addition, today's conference relates to Havlish v. bin Laden, 03 Civ. 9848; and John Does 1 through 7 v. the Taliban, 20 Misc. 740.

I'm going to identify the parties that I believe are here. I know we have a number of lawyers on the line. I'm going to ask that only the lawyers who anticipate speaking identify themselves when their case is called so we can have those appearances made. If somebody who does not initially state an appearance wishes to be heard later, we can have you state your appearance at that time. But for these purposes, I think I will just hear from the people who intend to speak.

So I will begin with a representative for the plaintiffs for the John Does 1 through 7 parties.

MR THORNTON: Good morning, your Honor. John Thornton on behalf of John Does 1 through 7, and my partner and associate are on the call also.

THE COURT: Thank you.

And on behalf of Havlish plaintiffs.

MR. WOLOSKY: Good morning, your Honor. This is Lee Wolosky, from Jenner & Block, for the Havlish plaintiffs. My partner Doug Mitchell is on the line, as well.

THE COURT: Thank you.

Let me hear, who do we have on behalf of the United States?

MS. VARGAS: Good morning, your Honor. This is Jeanette Vargas from the U.S. Attorney's office on behalf of the United States. Also on the line is Joseph Borson, from the United States Department of Justice.

THE COURT: Thank you.

And on behalf of the Federal Insurance plaintiffs?

MR. CARTER: Good morning, your Honor. Sean Carter from Cozen O'Connor.

THE COURT: Thank you.

And on behalf of Burnett plaintiffs?

MS. FLOWERS: Good morning, your Honor. It's Jodi Flowers on behalf of the Burnett plaintiffs, and also with me is my partner Don Migliori.

THE COURT: Thank you.

On behalf of O'Neill plaintiffs?

MR. GOLDMAN: Good morning, your Honor. This is Jerry Goldman on behalf of the O'Neill plaintiffs. I have my partner Bruce Strong on the line, and I have others listening. Thank you.

THE COURT: Thank you.

And on behalf of Ashton plaintiffs?

MS. BENETT: Good morning, your Honor. This is Megan

Benett for the Ashton plaintiffs. We have Michael Tremonte, of Sher Tremonte, who will be putting in a notice of appearance this morning. He and I will be the two people who will be speaking on behalf of Ashton.

THE COURT: Thank you.

Any other plaintiff groups that I haven't identified who intend to speak this morning? All right.

And I think we may have some representatives of defendants, though I don't know that they are going to be participating.

Do we have a lawyer on the phone on behalf of the Kingdom of Saudi Arabia?

MR. RAPAWY: Yes, your Honor. This is Gregory Rapawy of Kellogg Hansen. I do not anticipate speaking this morning, but I am on the line.

THE COURT: Okay. Thank you. And on behalf of the Republic of the Sudan?

MS. ERB: Good morning, your Honor. This is Nicole Erb. I'm joined by Chris Curran and Claire DeLelle. And likewise, we do not intend to speak this morning.

THE COURT: Thank you. And any other defendant groups who are on the line who would like to state their appearance?

Okay. Hearing none, I will assume that is our set of lawyers.

I understand we also have a line open for the public

and the press. I will remind everybody who is listening in that this is a court proceeding. Any recording or rebroadcasting of today's proceeding is strictly prohibited.

We have a court reporter on the line. To facilitate that person's job, we want to make sure that we are not speaking over one another — everybody will have an opportunity to be heard — that people are speaking slowly, and that you state your name each and every time you speak so that the court reporter knows to whom to attribute all statements.

Okay. I believe we have two primary matters on our agenda today.

First, we have the writs of execution against the assets held at the Federal Reserve Bank of New York. The government has said that these writs need to be addressed to facilitate the implementation of the President's foreign policy, so we will begin by talking about whether there is an efficient way to achieve that goal without having to resolve all of the questions surrounding the entitlements to those funds.

And second, there are currently stays on the writs of execution targeting the Afghanistan bank funds, so we will address that and, more broadly, how we want to move the litigation on these funds forward.

So let me begin with the first item, and probably I will address my comments in the first instance to Ms. Vargas.

So according to the government's statement of interest, the Havlish and Doe writs are currently standing in the way of implementing the division of the DAB funds that are currently held at the Federal Reserve, and the government has requested that these issues be dealt with in advance of all other issues. This will allow the executive branch to carry out its foreign policy providence and, as it represents to us, apparently the funds are needed to address a major Afghanistan humanitarian crisis.

And so I would like to begin the crisis about thinking about the best way that we can get out of the government's way so that it can execute its foreign policy.

My understanding is that the Havlish and Doe writs may be satisfied with far less than the $7 billion that are currently being held in the Federal Reserve. So given this, is it the government's view that modifying the Havlish and Doe writs to attach a smaller sum, which I understand would be likely something less than the $3.5 billion, would permit the transactions that are contemplated by President Biden's February 11 executive order and the OFAC license that he also issued on that same day?

Ms. Vargas, let me begin with you.

MS. VARGAS: Yes, your Honor. Thank you.

The government does believe that that would be satisfactory. What we are looking for is an order entered

expeditiously clarifying that the Doe and Havlish writs are null and void and have no effect as to the 3.5 billion in licensed assets but that those writs can remain in effect to the extent permissible by law as to all other assets pending further order of this Court.

As your Honor has observed, the Doe writ is for approximately 138 million. The Havlish writ is nominally in the amount of approximately $6.8 billion; but, as set forth in our statement of interest, TRIA permits attachment only to the extent of compensatory damages. The Havlish plaintiffs do not disagree with this position; and, therefore, the unlicensed funds that will remain in the account of the Federal Reserve Bank of New York after the 3.5 billion in licensed funds are removed will be more than sufficient to satisfy both the Doe and Havlish writs combined when the Havlish writ is appropriately modified to reflect compensatory damages only.

And alternatively, as set forth at length in the government's statement of interest, the licensed funds are not subject to attachment under TRIA as a matter of law as the licensed funds are not blocked assets within the meaning of the statute.

But for our purposes, what we need is an order simply stating that the writs are null and void and have no effect as to the 3.5 in licensed assets. And we understand that the Doe and Havlish plaintiffs do not object to this requested relief.

THE COURT: Terrific. That was going to be my next question.

And so that would be, just so I am clear, the proposal is simply an order that would effect those writs. They don't need to file new writs of execution, is that correct?

MS. VARGAS: That's correct from the government's perspective. What we require, under paragraph 5 of our license, the license states that the Federal Reserve Bank must comply with any applicable orders, rulings, writs, or other judicial process of the United States federal courts, which is why this is at issue. Therefore, we need an order that will allow the Fed to have confidence that these writs do not prevent any transfer of the licensed funds.

THE COURT: Okay. And if we issue that order expeditiously, is that all that the government needs at this time for it to carry out its foreign policy agenda?

MS. VARGAS: At this present time, that's correct, your Honor.

THE COURT: Okay. Thank you.

Let me turn now to John Thornton on behalf of the Doe plaintiffs and then to Mr. Wolosky on behalf of the Havlish plaintiffs to confirm that both parties are in agreement that the best way to proceed, and on your consent, is to issue an order indicating that the licensed funds are unavailable for the attachment of the writ.

Let me turn to Mr. Thornton first.

MR THORNTON: Thank you, your Honor.

From the way that was described, we would not object to that approach, you know, obviously with the understanding that our writ is not null and void; it's just that our writ doesn't reach those $3 1/2 billion that are licensed.

THE COURT: Thank you.

Mr. Wolosky?

MR. WOLOSKY: Your Honor, we have no objection; but, similarly, we believe that, as a matter of law, the Havlish writ that was served in August or September currently does not encompass the funds that the government wishes to move as a result of the actions, both the blocking and the licensing actions that the executive branch took on February 11. So certainly, to the extent that the Court wishes to enter an order making that clear with respect to the 3.5, the Havlish plaintiffs have no objection.

Your Honor has authority under New York CPLR Section 5240 to modify writs, if your Honor wishes to, to provide assurance to the government by means of clarification with respect to the funds that it wishes to move.

Again, we certainly don't think that an order -- we would not agree that an order nullifying a writ would be appropriate; but certainly modifying the writ, if the Court and the government thinks it is necessary to make clear that the

writ -- the Havlish writ does not encumber the 3.5 billion that the government wishes to move and which has now been licensed, we have no objection to that.

THE COURT: Okay. Thank you.

Does any other party wish to be heard exclusively on the question about how to act with respect to President Biden's executive order and the OFAC license in connection with the funds in the Federal Reserve?

Okay. I don't know that this has ever happened, but hearing nobody from any of the plaintiffs' executive committees, I think we can move forward on that issue.

So I'm going to direct Ms. Vargas, if you can work with the lawyers for the Doe and Havlish plaintiffs on preparing an order for my signature, obviously the sooner you get it to me, the sooner I will sign it and the funds will be made available to the executive. So I will just be on the lookout for that draft order. If you can get it to me as soon as possible, I will sign it.

MS. VARGAS: Thank you, your Honor. We will work on it and get it to you very shortly.

MS. BENETT: Your Honor, this is Megan Benett on behalf of the Ashton plaintiffs.

I just wanted to make sure I understood that, at least on our behalf, there is no objection, of course, to rendering the Havlish and Doe writs null and void with respect to the

licensed assets, and we would of course agree that that should move expeditiously.

To the extent that an order would address anything concerning those writs and the modification, for example, of the Havlish writ, I think that that would be something we would want to be heard on. But, again, I don't think that's necessary in the context of moving forward with rendering the writs null and void with respect to the licensed assets.

THE COURT: I'm not sure exactly what it is you are referring to, Ms. Benett. What precisely do you wish to be heard on with respect to the Havlish writ?

MS. BENETT: Well, to the --

THE COURT: I know you want to be heard on the issue of stay, but on issue of the writ itself.

MS. BENETT: As we raised in the letter to the Court that we submitted, we don't necessarily agree with Mr. Wolosky's position that the Court has the authority to modify the writ under Article 52 of the New York CPLR. That's one of the issues that we think would warrant some further briefing and that we believe we have an interest in presenting our position on that to the Court.

MR. TREMONTE: Your Honor, this is Michael Tremonte, on behalf also of the Ashton plaintiffs.

I just wonder if it is helpful to formulate this precisely to see if in fact we are all in agreement.

It sounds as though the government and everyone else shares the view that, with respect to the licensed funds, that is to say, the portion of the DAB assets authorized by the OFAC license to be transferred for the benefit of the Afghan people, it sounds like we all agree that as a matter of law those funds, the licensed funds, are not subject to attachment in this litigation. And I think if that alone is the basis for the Court's order directing the release of those funds so that the administration can fulfill its foreign policy objectives, I don't think there is any controversy here at all as to this piece.

THE COURT: Okay. I really hope there is no hold-up here. So I am going to direct that Ms. Vargas communicate with the Havlish and Doe plaintiffs, as they are the only ones who currently have writs attached to those funds as far as I am aware, and to submit something on the -- a proposed order on the MDL docket as soon as you can. I will wait 24 hours to sign that order. If anybody wishes to be heard with respect to that order, you can file it within that 24-hour window. But I will sign that order, assuming it is otherwise appropriate, within 24 hours after the 24-hour window expires. And certainly to the extent you can let me know before 24 hours that there is no objection, we will go ahead and get that up.

All right. Thank you. Let's move forward on the next phase, which is in connection with these writs of execution.

They have been stayed. Both the Havlish and the Doe plaintiffs have requested that we lift those stays. And so the next question is how we should proceed with respect to those writs and briefing on the issue with respect to entitlement to any of the DAB funds.

So let me first hear from the Havlish plaintiffs on how they think the most efficient way is for us to proceed at this point.

MR. WOLOSKY: Thank you, your Honor. This is Lee Wolosky for the Havlish plaintiffs.

The position of the Havlish creditors is that the Court should lift the stay of enforcement in order to allow these proceedings to move forward in accordance with normally applicable procedures under New York law which assure that no MDL party will be prejudiced.

This matter is certainly unique in many respects, but what we are asking for is not. We are asking the Court to move forward with the next procedural step that parties holding writs of execution must take in order to keep enforcement of those writs.

The stay was put in place to permit the government to file its statement of interest. That has now happened. The government does not oppose the lifting of the stay consistent with the views expressed in its statement of interest. And once the stay is lifted, all parties will have, as the

White House said in its February 11 statement when it blocked the funds at issue, "a full opportunity to have their claims heard in U.S. courts."

Other MDL parties oppose lifting the stay but, as my partner Doug Mitchell will explain in a moment, lifting the stay will afford them a full opportunity to have their claims heard by the Court. Significantly, the Havlish creditors have no objection to their participation in the briefing following the filing of the Havlish and Doe's motions for turnover.

I'm going to turn it over to my partner Doug Mitchell, who will address with greater specificity the procedures that we envision will govern in the event that the Court lifts the stay.

THE COURT: Thank you.

MR. MITCHELL: Your Honor, this is Doug Mitchell, and I will be brief.

But as Mr. Wolosky noted, under Federal Rule of Civil Procedure 69(a), New York law applies to the resolution of and the litigation of issues relating to judgment enforcement proceedings subject to any application of TRIA in the context of those judgment enforcement proceedings.

If we look at CPLR 5225 and/or 5227, both of those enforcement procedures contemplate filing a special proceeding to litigate claims relating to assets of a debtor that are held in the hands of a garnishee such as the New York Federal

Reserve Bank. Those provisions also specifically reference another section, 5239, which allows claims by adverse parties to raise their claims and to litigate their interest with respect to those assets; and then it also provides the Court with a framework for resolving those differing competing claims and making final determinations about the disposition of the assets that are subject to the writs filed by the Havlish plaintiffs and the Doe plaintiffs. And, consequently, your Honor, we think that the New York law that has been in place for quite some time governing the litigation of issues involved with enforcing judgments against assets held by garnishees will provide the Court and the parties with a full and fair opportunity to be heard on any and all issues that will be involved in this enforcement proceeding. We also think that the methodology to get that opportunity or to start that process requires lifting the stay so that that process can be implemented and the parties can move forward within that framework.

THE COURT: How quickly after we lift the stay would you anticipate filing your application?

MR. WOLOSKY: Your Honor, Lee Wolosky again.

We would propose filing our motion for turnover two weeks from today, March 8.

THE COURT: Okay. And then just so I understand your position, once you file your motion for turnover, interested

parties would be permitted to then participate either as an interpleader or otherwise, is that correct?

MR. WOLOSKY: Lee Wolosky again, your Honor.

That is correct. We do not oppose any MDL parties participating in the briefing. And obviously other motion practice that is underway with respect to the finalization of money damage awards would proceed unobstructed and concurrently.

THE COURT: Thank you.

Mr. Thornton, on behalf of the John Doe plaintiffs, anything that you want to add to that proposal or are you in agreement with what the Havlish creditors are proposing?

MR THORNTON: Your Honor, we are basically in agreement with what they are proposing and the schedule. We just see this as a situation, a very straightforward situation, where we have a writ that I believe we have had since September and that the stay was initiated in order for the government to give its statement of interest. It's done that. The government doesn't oppose the matter moving forward, so we think the matter should move forward. We are fine with March 8. We think we can file our turnover motion by March 8.

As far as the booty thing and who gets to say anything about the briefing, our feeling is that there are only two parties in this matter that have valid writs of execution against the funds at issue and that those two parties — us and

the Havlish creditors and writ holders — have some common questions of fact that we will both address in our motions, and that, in the normal course, people that don't share those commonalities don't have -- you know, aren't allowed to come in and brief concerning them.

We are concerned about, and we filed a motion, as you know, a letter motion, concerning the fact that we are in the MDL with the rest of the September 11th plaintiffs who don't have judgments, even, against the same parties, let alone writs of execution, and we are concerned that the process not get slowed down from what the normal process would be under the prosecution of a writ under New York law.

THE COURT: Thank you. Understood.

All right. Let me turn to the members of the plaintiffs' executive committee. I believe that there are lawyers who wish to be heard.

Why don't I just begin, Mr. Carter, do you wish to be heard?

MR. CARTER: Yes, your Honor. Thank you.

From my perspective, as one of the long-serving chairs of the plaintiffs' executive committee, I think I come at this with an eye towards the overarching case management issues that some of the other counsel may not be as sensitized to, and also mindful of the other issues that are going to require the Court's attention in the very near term, including our motion

under Rule 54(b) based on the decisions in *Kaplan* and *Honickman*.

It seems to us that one of the obvious challenges in this moment is that recent developments have prompted numerous plaintiffs' groups to file applications seeking, in effect, to be placed on equal footing with the Havlish and Doe plaintiffs in this context. And part of the difficulty with that is that the procedural status and degree of advancement of those plaintiffs' claims against the Taliban varies quite significantly.

On the one hand of the spectrum, we have the Havlish and Doe plaintiffs who have secured monetary judgments again the Taliban and served writs of execution. You then have certain plaintiffs in the federal action who secured liability judgments against the Taliban in 2006 and filed proofs to obtain a monetary award as to the Taliban in 2007, which the Court has addressed in other contexts, but not as to the Taliban. You have other plaintiffs who likewise received liability --

THE COURT: Mr. Carter? Sorry.

MR. CARTER: Yes.

THE COURT: Mr. Carter, can you speak a little more slowly?

MR. CARTER: Yes, sure.

You then have other plaintiffs who likewise received

liability default judgments in 2006 and have moved more recently in the past few months for monetary awards as to the Taliban. There are then additional plaintiffs who were added to complaints in which the Taliban was named as a defendant, but not until after the 2006 liability defaults were entered, who are now seeking both liability and monetary judgments. And beyond that, there are plaintiffs who are, in one way or another, taking action now to validate claims against the Taliban in the first instance.

And so as a practical matter, it seems to me that it will be very difficult for the Court to harmonize the procedural status of the claims of all of those different groups. And it also seems clear that plaintiffs who took earlier action will have good reason to argue that they would be prejudiced by having their rights deferred while less advanced claims catch up.

And even beyond that, any attempt to achieve this sort of equal footing result would require the Court to undertake what appears to be a very expansive scope of work in a very short period of time, and I think some of the comments you heard from other counsel about the set of activities that will be set in motion by the commencement of the turnover proceeding underscore that.

So at least from my perspective, all of those considerations call out for a concerted effort on the part of

the plaintiffs who have presented applications to the Court on this front to sit down in earnest to try to work out a framework that would obviate the need for the Court to address competing priority and allocation arguments, and that would in turn obviate the need for the Court to decide all of the pending judgment applications under whatever approach the Court might ultimately find most appropriate.

And again, an agreement on that front would then allow the parties and the Court to focus the remaining briefing on the scope and application of Section 201 of the Terrorism Risk Insurance Act, and that can be quite focused if the plaintiffs are all on the same page. It does seem to me that those conversations are likely to be more fruitful if they are occurring before briefing begins in earnest on the turnover proceedings. That could happen very soon. But it does strike us that it would be beneficial for the Court to urge the parties to sit down with one another and try and work out some agreements on this framework.

THE COURT: Thank you, Mr. Carter. I agree with a lot of what you said. I also don't see how, even if the Court were able to undertake the Herculean task of addressing all of the pending or anticipated motions with respect to claims against the Taliban, those claims would ever even be on equal footing with the Doe and Havlish plaintiffs, given that they have secured judgments and filed their writs. It would seem to me,

under firm circuit law, that they would be a priority for any claim.

And so that to me is yet another reason why having a fire drill with respect to the outstanding and anticipated motions seems to be time not well spent. So I appreciate your suggestion that coming up with a way to focus the Court's attention on the issues that are most important and would address the parties' realistic needs is the best way to proceed. So thank you for those comments.

MR. CARTER: Certainly, your Honor.

THE COURT: I know Ms. Benett said she wanted to be heard, so I will turn to Ms. Benett or Mr. Tremonte.

MS. BENETT: Thank you, your Honor. I think I will defer to Mr. Tremonte on this.

MR. TREMONTE: Thank you, your Honor. It is Michael Tremonte.

I think we are largely in agreement with Mr. Carter's suggestion, I think on the understanding that the stay would remain in place while the parties are conferring towards the goal that Mr. Carter articulated. We do believe that the stay should remain in place at this juncture. The touchstone, of course, is that we want all the 9/11 families to be treated fairly and so, consistent with that important goal, any proposal, you know, would need to be, at least in the short term, against the backdrop of the stay remaining in place.

If the Court is inclined to instruct the parties to meet and confer, as Mr. Carter suggested, I think we would likely be in agreement with that. Alternatively, another procedure that would be consistent with ensuring fairness to all of the 9/11 families would be to address the pending motions for final damages judgments, to schedule briefing on the threshold questions of attachability of the remaining blocked assets under TRIA, and we think at the same time to schedule briefing on the question of the appropriate proceeding for enforcing the judgments. And that, of course, is a potentially very consequential set of issues as to enforcement and, again, it is one with respect to which the interested parties, the full range of interested parties should be heard, and there is clear authority for that, in our view, under the CPLR.

THE COURT: Can I interrupt you for a second?

MR. TREMONTE: Yes.

THE COURT: What is the authority? Your clients, as I understand it, have no judgments against these entities for which you could attach to the funds. So what standing does your client have, do you have to challenge the procedural mechanism by which the Havlish and Doe plaintiffs seek to proceed on their execution? I understand that you might have a right to, whether it is sort of interplead or otherwise join the turnover proceeding, but why do you have a say on how they

proceed as a procedural matter?

MR. TREMONTE: Yes, your Honor.

So in addition to the interpleader rights, which we agree that we clearly have, we think that we are also interested persons within the meaning of CPLR 5240, and that is a provision that affords the Court very broad powers upon the motion of an interested party or, frankly, on the Court's own initiative within the clear language of the provision to modify, limit, and condition the use of any enforcement procedure. And so we think at a minimum that provision affords us standing to be heard and to brief the issues in connection with the appropriate procedure, especially in connection with such a unique set of circumstances as this one, where ensuring fairness to the 9/11 families, to all of them, not just a very small minority, is of paramount importance. So that is the --

THE COURT: Understood. I don't think it needs to be said, but obviously I also am interested in fairness. I still don't understand how you would be, under the law, an interested party other than speculatively because your clients have no judgment and some motions have been filed, some motions are anticipated. Who know when those will actually be addressed. But the interest that you hold at this point is essentially speculative until you have a judgment. I understand that you have an interest generally because your interest is in providing fairness and equity to all of the 9/11 families, but

I'm not sure as a legal proposition that you have an interest as the law understands it.

MR. TREMONTE: Your Honor, so here is where I think it is so important to keep the stay in place at least long enough to brief this and related issues. The potential prejudice to the overwhelming majority of 9/11 families of having no opportunity to be heard on precisely this issue would be overwhelming, and so we think at a minimum the appropriate next step for the Court to take is to, with the stay remaining in place, to afford an opportunity to arguably interested parties to brief that very issue. It's a complicated issue. There is not a lot of precedent on it, although what precedent there is clearly affords the Court very broad equitable powers. And we would argue that this situation is a very strong candidate for the exercise of those equitable powers because of the interests at stake and because of the fortuity of the situation we find ourselves in as a result of a foreign policy decision that nobody could have really accurately predicted in terms of its temporal current.

So for those reasons, among others, we think really what is appropriate here is keep the stay in place and let us brief that very issue in addition to the threshold questions, which are federal law questions, of the attachability of the blocked assets.

THE COURT: If we were to enter judgment tomorrow on

behalf of your clients as against the Taliban, hypothetically speaking, so that you had the third judgment that you could execute against the DAB funds, are you aware of any law that would allow you to jump over the Doe and Havlish plaintiffs? Doesn't their priority mean that, no matter what, they get to go first?

MR. TREMONTE: That is a critical threshold question that is inextricable from the fairness question and, in our view, from the equities questions. Our position is that all 9/11 families should be on an equal footing. And again --

THE COURT: I understand that's your position, but are you aware of any law? I understand that that's your desire, your goal, the objective here. But are you aware of any law that would allow a third-in-line judgment holder to jump judgment holder one and two?

MR. TREMONTE: Certain --

THE COURT: My understanding of Second Circuit law, and I am looking at *CSX Transportation v. Island Rail Terminal*, I'm not aware of any law that would allow judgment holder number three, which there is none at this point, but were there to become one, I'm not aware of any law that would allow that judgment holder to jump in line in order to get priority. And so I want to make sure -- I understand the goal and the objective of fairness and equity, but I want to make sure that we are acting in a way that is consistent with the law and it

seems to me unfair to the Doe and Havlish judgment holders to hold up their execution if, under all circumstances of the law, they are first in line. What is the authority to prejudice them in your client's interest when they are going to be third in line or farther in line than Doe and Havlish?

MR. TREMONTE: So, your Honor, I think there are potentially multiple sources of legal authority here that could potentially come into play, although I want to emphasize again, in terms of the prejudice analysis, it would be, I think, inarguably, much more prejudicial to the majority of 9/11 families that if they are in fact interested persons within the meaning of 5240 and if, moreover, it is an appropriate exercise of the Court's equitable powers under that provision of the CPLR to adjust the enforcement mechanisms here, then it is overwhelmingly prejudicial to them to not even afford them an opportunity to brief whether or not they qualify under the statute as such.

And then, in addition to that, there are also potentially issues with, you know, defects or infirmities to the writs that also would need to be briefed. So I think there are multiple potential sources of legal authority, beginning with 5240; and, on top of that, there is the prejudice analysis which argues very, very strongly in favor of a brief continuance of the stay to afford the parties an opportunity to brief the relevant procedures.

THE COURT: Why would you be addressing any --

MR. TREMONTE: And there are multiple cases --

THE COURT: Why would you be addressing any --

MR. TREMONTE: I'm sorry, your Honor.

THE COURT: Why would you be addressing any defect of the writ on this particular mechanism, meaning wouldn't that be something that you would address once the stay is lifted?

MR. TREMONTE: Right. I think if we are briefing the question of the Court's authority to modify enforcement procedures to ensure fairness, it would make sense, in our view, to simultaneously brief issues going to defects in the infirmities in the writs of execution that would also impact priority.

But, again, to be very, very clear, we are not looking to jump ahead. We are looking to be on equal footing. And I think there is legal authority for us to argue that it is within the Court's power to put in place procedures to effectuate that under these circumstances.

THE COURT: Okay. Any other counsel for one of the plaintiffs' groups wish to be heard.

MS. FLOWERS: Your Honor, this is Jodi Flowers. I just wanted to offer a citation for you for your question previously. That would be *Plymouth Ventures Partners II L.P. v. GRT Source, LLC*. It is Court of Appeals of New York, December 16, 2021. It doesn't have a number yet. N.E.3d 2021

Westlaw number 59268932021. It discusses Section 5240's -- the Court's power under 5240, and I suggest that it might be a place for the Court to look, quoting, "where the Court needs to avoid expense, embarrassment, disadvantage, or other prejudice to parties or courts," the Court can look at it, inseparable powers, the precise question that we are talking about.

And I have to take issue with the statement by I believe it was counsel for the Doe plaintiffs that there are only two interests at issue here. I think we have been clear that we believe there are more. For Burnett, for example, we do have default judgments against the Taliban and have had them since 2006 on behalf of 5,000 plaintiffs, over 5,000 plaintiffs, 5,182 plaintiffs. And these are also people who have their damages liquidated as against Iran. So like with other procedures before this Court, it is not a heavy stretch to say that a joint tortfeasor can be held liable for those same damages.

So I appreciate and sympathize with the amount of papers that came in as a result of these developments, but a lot of this work has already been done by this Court, a lot of hard work on determining the damages; and I believe that if we had the benefit of a little bit of time, we could address those fully and come up with a procedure that's not onerous to this Court and doesn't derail the proceedings.

You know, I'm not going to repeat the arguments in our

papers, I would simply just say that we are very concerned that lifting the stay could create a rush to judgments. I would like to believe Mr. Wolosky that no MDL party will be prejudiced, but absent the ability to brief these threshold issues before we are so off to the races I think will prejudice at least my plaintiffs.

THE COURT: Thank you.

Would Mr. Thornton or Mr. Wolosky or Mr. Mitchell wish to be heard in response?

MR. WOLOSKY: It is Lee Wolosky. Just briefly, your Honor.

Again, just to situate us, all we are here today asking the Court to do is to lift the stay. Obviously no money is going anywhere. All issues that have been raised on this conference can and should be briefed.

And also, if it gives the Court assurance, you know, we are happy to continue to meet and confer with the other parties, as we have been, as we move forward.

Thank you, your Honor.

THE COURT: Thank you. All right. Does anybody else wish to be heard?

MR THORNTON: Your Honor, John Thornton on behalf of the Doe plaintiffs.

I didn't hear anything that had any foundation in law for authority that would stop or that, you know, could be used

to prevent just the normal prosecution of our writ. And I also didn't hear anything that I thought made any practical sense, and so we would oppose it. We think that it would prejudice our plaintiffs, our clients' rights, and so we don't see any reason not to simply allow us to move forward on the writs, as the government thinks we should, and we don't see any reason to tie our ability to do that to an unrelated, factually unrelated group of plaintiffs.

Thank you.

THE COURT: Thank you. I think that's a good point. The Doe judgments, I believe, are a little more than $100 million, and with $3.5 billion assets that are available, I think there is a fair question whether or not they should be treated, at a minimum, on a separate track. And so I would like everybody to be thinking about whether or not the Doe plaintiffs, who are not part of the 9/11 case otherwise, only by virtue of these funds, whether or not there is any objection to lifting the stay for execution with respect to their judgment.

So here is what I would like. First and foremost, I will turn back to Ms. Vargas, I would like you to get me a proposed order so that the executive carry out its foreign policy objectives as quickly as possible. As I have indicated, I will give the parties 24 hours from the filing of that proposed order to file any objections or raise any issues, and

at the 24-hour expiration, assuming there is no reason not to, I will go ahead and sign that proposed order.

So Ms. Vargas, you can also notify your point of contact at the Department of State that that's going to be the procedure so that they are starting to get themselves organized with respect to those assets.

MS. VARGAS: Thank you, your Honor.

THE COURT: Thank you.

With respect to the lifting of the stay, I'm going to hold off on lifting it today to give the parties an opportunity to be heard. I am hoping I'm not going to get full-blown memoranda of law. I think letter briefs should be adequate to raise the issues, and I will direct that those are filed by next Monday, which I believe is the 28th of February.

I assume the Havlish and Doe parties would like to be heard in opposition to that. I know that you are interested in moving this as quickly as possible, so I will assume that you will get your opposition submissions in soon thereafter, but I will give you the -- I don't know how long these briefs are going to be or how much time you will need to oppose them, so we will defer to the Doe and Havlish plaintiffs. If you can just let me know when you anticipate filing your objections to those briefs and then we will take all of that under advisement.

Separately I would like, as Mr. Carter raised, to have

the parties speak about a proposal for the turnover proceedings if and when the stay is lifted, and so I will ask for a proposal from the parties on how that should be borne out as well, and I will direct that that be filed next Wednesday, which I believe is March 2. I don't have my calendar in front of me, but I think that's right. Yes. March 2. If you can file a letter application with the Court with a proposal, having had a meet-and-confer with both the Doe and Havlish judgment holders as well as the relevant members of the plaintiffs' executive committee and any other interested plaintiffs as to how we would proceed assuming the stay is lifted, and we will take all of that under advisement.

I think that addresses all of the issues that I wanted to cover today. Anything further from the -- oh, and if I can ask, as well, with respect to the letter that's filed on March 2, if the parties can specifically address this issue in connection with the Doe plaintiffs, given that they are not 9/11 plaintiffs and their judgment is relatively small in connection with the funds available. So I would also like to hear whether or not there is any objection to allowing that application to proceed at a quicker pace or on a separate track so that those plaintiffs who are really just being brought in to the morass of the MDL can execute their judgment.

All right. With that, let me turn to the Havlish and the Doe judgment holders. Anything further you would like to

discuss today?

MR. WOLOSKY: Lee Wolosky. No, your Honor, for Havlish.

MR THORNTON: John Thornton. No, your Honor, for the Doe plaintiffs.

THE COURT: Great. Thank you.

Ms. Vargas, anything further from the government?

MS. VARGAS: Not at this time, your Honor.

THE COURT: Okay. And anything further from any of the other plaintiffs' counsel who have spoken today?

A VOICE: No, your Honor.

A VOICE: No, your Honor.

A VOICE: No, your Honor.

THE COURT: All right. Thank you very much. Ms. Vargas, I will look out for your proposed order. I hope everybody remains healthy and safe.

We are adjourned. Thank you.

COUNSEL: Thank you.

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